

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID DEVORSS

Claimant

VS.

GOODYEAR TIRE & RUBBER COMPANY

Respondent

AND

LIBERTY MUTUAL INSURANCE COMPANY

Insurance Carrier

Docket No. 1,011,373

ORDER

Respondent appeals the March 23, 2004 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was awarded benefits in the form of medical treatment and temporary total disability compensation after the Administrative Law Judge ruled that claimant had proven that he suffered accidental injury arising out of and in the course of his employment.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?
- (2) Is claimant entitled to ongoing medical treatment?
- (3) Is claimant entitled to temporary total disability compensation?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge (ALJ) should be affirmed.

Claimant alleges that he suffered accidental injury on or about April 4, 2003, while working at the banbury machine, at job which claimant described as requiring repetitive lifting of 40-pound bags throughout his entire work shift. Claimant testified that he was having problems throughout the day and, by the end of the shift, was having difficulty standing up straight.

Claimant went to see his chiropractor, Michael Brady, D.C., on April 5, 2003, and was limited to no heavy lifting over 25 pounds. Claimant then applied for and received Accident and Sickness benefits, which are substantially different than workers' compensation benefits. Claimant testified that he was unclear as to the procedures that needed to be followed in order to get either Accident and Sickness, or workers' compensation, because whenever he asked people questions about these programs, no one seemed to know the answers. Claimant had, however, been receiving disability benefits under Accident and Sickness since approximately April of 2003.

Dr. Brady's April 5, 2003 report notes that the condition in claimant's low back started approximately two weeks before, which is contrary to claimant's testimony regarding the progression of the accident.

Claimant's history is significant in that he has had long-term back problems, suffering an injury while installing carpet before 1995, with significant low back injuries while working for respondent in June of 1995 and again in December of 1998. Claimant returned to work after these incidents, but acknowledges his ongoing back problems are, in all likelihood, permanent.

In this instance, claimant testified that he awoke April 5 (the day after the lifting incidents), with his back so stiff he could not straighten up.

The ALJ determined at the August 20, 2003 hearing that claimant should be examined by an independent health care practitioner. Claimant was referred to P. Brent Koprivica, M.D., for an independent medical examination by the ALJ in an Order dated August 20, 2003. For reasons unexplained in the record, claimant was not examined by Dr. Koprivica until February 17, 2004, six months after the ordered examination. In the rather lengthy report from Dr. Koprivica, it is apparent that claimant's long history of problems, coupled with his physically demanding work with respondent, is responsible for his current and ongoing back difficulties. The ALJ awarded benefits based substantially on Dr. Koprivica's opinion that claimant's disabling, mechanical low back pain stems from cumulative injuries suffered as a result of his ongoing employment activities. The Board finds claimant has satisfied his burden of proving his entitlement to benefits, showing that he suffered accidental injury arising out of and in the course of his employment.¹

¹ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

Respondent, additionally, argues that claimant should be denied medical care and ongoing temporary total disability compensation. However, once the dispute regarding the compensability of the claim is resolved, the issues dealing with ongoing medical treatment or temporary total disability compensation are not issues over which the Board takes jurisdiction on an appeal from a preliminary hearing.² The Board, therefore, dismisses issues 2 and 3 from respondent's appeal at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated March 23, 2004, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 2004.

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Patrick M. Salsbury, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-534a and K.S.A. 2002 Supp. 44-551.